

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIME SQUARE CONSTRUCTION, INC.,

Plaintiff,

v.

BUILDING AND CONSTRUCTION TRADES
COUNCIL OF GREATER NEW YORK,
ENTERPRISE ASSOCIATION OF
STEAMFITTERS LOCAL 638 OF THE UNITED
ASSOCIATION, CEMENT AND CONCRETE
WORKERS LOCAL 20 OF THE LABORERS
INTERNATIONAL UNION OF NORTH
AMERICA, UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA
LOCAL 608, LOCAL #46 METALLIC LATHERS
UNION AND REINFORCING IRONWORKERS
OF NEW YORK AND VICINITY OF THE
INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL, ORNAMENTAL AND
REINFORCING IRON WORKERS,
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 14-14B, INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL
15D, AFFILIATED WITH THE AFL-CIO,
LABORERS LOCAL 79, A CONSTITUENT
LOCAL UNION OF THE MASON TENDERS
DISTRICT COUNCIL OF GREATER NEW
YORK, AFFILIATED WITH LABORERS
INTERNATIONAL UNION OF NORTH
AMERICA, MASON TENDERS DISTRICT
COUNCIL OF GREATER NEW YORK,
DISTRICT COUNCIL OF NEW YORK CITY
AND VICINITY OF THE UNITED
BROTHERHOOD OF CARPENTERS, JOINERS
OF AMERICA, AFL-CIO AND LOCAL UNION
3, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS AND TEAMSTERS
LOCAL 282 A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO,

Defendants.

X

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: 07-CIV-7403

: (Sullivan)

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: ANSWER OF BUILDING
: CONSTRUCTION TRADES
: COUNCIL OF GREATER
: NEW YORK

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The Building and Construction Trades Council of Greater New York (hereinafter "BCTC"), by and through its attorneys, COLLERAN, O'HARA & MILLS, answers the Complaint, as follows:

1. Admits that the action is brought pursuant to Section 303 of the Labor Management Relations Act of 1947 ("LMRA") 29 U.S.C. § 187, but denies that this Court has jurisdiction over the BCTC under this statute, denies that the BCTC engaged in any unlawful activity under the LMRA, and denies that Plaintiff, Times Square Construction, Inc. (hereinafter "Times Square" or "Plaintiff") is entitled to any relief under the statute.

2. Admits that Plaintiff has alleged jurisdiction under Section 303 of the LMRA, 28 U.S.C. §187, but denies the existence of a valid claim or any violation thereunder by the BCTC.

3. Admits that the Southern District is an appropriate venue, but denies any actionable claim arising within this district.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "4" of the Complaint.

5. Admits the allegations in paragraph "5" insofar as it is alleged that the BCTC is an unincorporated association consisting of constituent labor organizations with its principal office located at 71 West 23rd Street, suite 501, City of New York, County of New York, State of New York, 10010, but denies that the BCTC is a labor organization within the meaning of the National Labor Relations Act (the "Act") and denies all other allegations set forth in paragraph "5" of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" through "16" of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Complaint, except admits that Times Square is performing work on a project located at 785 Eighth Avenue, New York City, New York ("Jobsite").

8. Denies of the allegations set forth in paragraphs "18" through "27" of the Complaint.

9. Denies the allegations contained in paragraph "28" insofar as it alleges the establishment of a valid reserve gate system; and deny the rest and remainder of the allegations of paragraph "28".

10. Denies the allegations set forth in paragraphs "29", "30" and "31".

11. Denies knowledge and information sufficient to form a belief as to the truth of the allegations forth in paragraphs "32", "33", "34" and "35" but denies any BCTC knowledge of and/or involvement in the alleged activity, and denies that any such alleged activity can be attributed to the BCTC or its agents, and further denies the rest and remainder of the allegations.

12. Denies the allegations set forth in paragraphs "36", "37", "38", "39", "40", "41", "42", "43", "44", and "45".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. The Complaint fails to state a claim upon which relief can be granted against BCTC.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. The Court is without subject matter jurisdiction under §303 with respect to the BCTC since the BCTC is not a labor organization within the meaning of the NLRA.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. Plaintiff failed to state its allegations against BCTC with the requisite specificity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. Plaintiffs claims are barred, in whole or in part by the doctrines of waiver, estoppel, and/or unclean hands.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. Without, admitting any action or statements by the BCTC, any alleged action or statement by the BCTC constitutes protected conduct under the U.S. Constitution, federal law, and/or state law and is not actionable.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. The relief requested by Plaintiff is overbroad and the damages alleged cannot be attributed to the BCTC.


AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

19. The Complaint fails to state a claim for relief against the BCTC because the Complaint does not allege that acts allegedly attributed to the BCTC were authorized, ratified, and/or undertaken by officers, agents or every member of the BCTC.

WHEREFORE, the Complaint should be dismissed and costs and disbursements and attorneys fees incurred in defense of this action should be awarded to the BCTC.

Dated: Garden City, New York
September 7, 2007

COLLERAN, O'HARA & MILLS LLP

By: 
CAROL O'ROURKE PENNINGTON (0594)
Attorneys for BUILDING CONSTRUCTION
TRADES COUNCIL OF GREATER NEW
YORK
1225 Franklin Avenue, Suite 450
Garden City, New York 11530

TO: Joel E. Cohen, Esq.
McDermott, Will & Emery, LLP
Counsel to Plaintiff
340 Madison Avenue
New York, New York 10173

Building Construction Trades Council of Greater New York
71 West 23rd Street Suite 503-01
New York, New York 10010

Enterprise Association of Steamfitters Local 638
32-32 48th Avenue
Long Island City, New York 11101

Cement and Concrete Workers Local 20 of the
Laborers International Union of North America
3636 33rd Street
Long Island City, New York 11106

United Brotherhood of Carpenters & Joiners of America Local 608
505 Eighth Avenue
New York, New York 10021

Local #46 Metallic Lathers Union and Reinforcing Ironworkers
of New York and Vicinity of the International Association of
Bridge, Structural, Ornamental and Reinforcing Iron Workers
1322 Third Avenue
New York, New York 11354

International Union of Operating Engineers Local 14-14B
141-57 Northern Boulevard
Flushing, New York 10011

International Union of Operating Engineers, Local 15D
AFL-CIO
265 West 14th Street
New York, New York 10011

Laborers Local 79
Mason Tenders District Council of Greater New York
520 Eighth Avenue, Suite 650
New York, New York 10018

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New York, New York 10018

District Council of New York City and Vicinity
United Brotherhood of Carpenters and Joiners of America, AFL-CIO
395 Hudson Street
New York, New York 10014

Local Union 3
International Brotherhood of Electrical Workers
158-11 Harry Van Arsdale Jr. Avenue
Flushing, New York 11365

Teamsters Local 282
a/w International Brotherhood of Teamsters
2500 Marcus Avenue
Lake Success, New York 11042

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ELECTRICAL WORKERS AND TEAMSTERS
LOCAL 282 A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Defendants.

: AFFIDAVIT OF SERVICE

-----X
STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

LINDA PERILLO, being duly sworn, deposes and says:

Deponent is not a party to this action, is over eighteen (18) years of age
and resides in Garden City South, New York 11530.

On September 7, 2007, Deponent served the within ANSWER OF BUILDING CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK upon the following parties in this action, at the addresses indicated below, which addresses has been designated by said party for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

TO: Joel E. Cohen, Esq.
McDermott, Will & Emery LLP
Counsel to Plaintiff
340 Madison Avenue
New York, New York 10173

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Teamsters Local 282
a/w International Brotherhood of Teamsters
2500 Marcus Avenue
Lake Success, New York 11042


LINDA PERILLO

Sworn to before me this
7th day of September, 2007


NOTARY PUBLIC

GABRIELLA LERCARA
Notary Public, State of New York
No. 4978151
Qualified in Nassau County
Commission Expires Feb. 25, 2011